

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TENNESSEE  
KNOXVILLE DIVISION**

COVENANT HEALTH,

Plaintiff,

v.

EXECUTIVE RISK INDEMNITY INC.,

Defendant.

Civil Action No. 3:05-CV-549

Judge Phillips/Guyton

Jury Demanded

**AGREED QUALIFIED PROTECTIVE ORDER**

Upon the agreement of the parties Plaintiff Covenant Health ("Covenant") and Defendant Executive Risk Indemnity Inc. ("Executive Risk"), as evidenced by the signatures of counsel below, it is hereby ORDERED that, subject to further order of the Court:

- (1) The current parties (and their attorneys) are hereby authorized to receive, subpoena, and transmit "protected health information" (also referred to herein as "PHI") to the extent and subject to the conditions outlined herein.
- (2) For the purposes of this **Qualified Protective Order**, "PHI" or "protected health information" shall have the same scope and definition as set forth in 45 CFR 160.103 and 160.501 ("HIPAA"). Without limiting the generality of the foregoing, "PHI" includes, but is not limited to, health information, including demographic information, relating to either, (a) the past, present or future physical or mental condition of an individual, (b) the provision of care to an individual, or (c) the payment for care provided to an individual,

which identifies the individual or which reasonably could be expected to identify the individual.

- (3) The parties are hereby authorized to disclose PHI to all attorneys of record in this matter.
- (4) The parties and their attorneys shall be permitted to use the PHI in any manner that is reasonably connected with the above-captioned litigation. This includes, but is not limited to, disclosure to the parties, their attorneys of record, the attorneys' firm (i.e., attorneys, support staff, agents, and consultants), the parties' insurers, experts, consultants, court personnel, court reporters, copy services, trial consultants, jurors, venire members, and other entities involved in the litigation process.
- (5) At the conclusion of the litigation as to any Defendant (which shall be defined as the point at which final orders disposing of the entire case as to any Defendant have been entered, or the time at which all trial and appellate proceedings have been exhausted as to any Defendant), that Defendant and any person or entity in possession of PHI received from that Defendant pursuant to paragraph 4 of this order shall destroy any and all copies of PHI except: 1) the Defendant that is no longer in the litigation may retain PHI generated by him/her/it; and 2) the remaining Defendants in the litigation, and persons or entities receiving PHI from those Defendants pursuant to paragraph 4 of this order, may retain PHI in their possession.
- (6) This order shall not control or limit the use of protected health information that comes into the possession of any party or any party's attorney from a source other than a "covered entity", (as that term is defined in 45 CFR 160.103).
- (7) Nothing in this order authorizes defense counsel to obtain medical records or information through means other than formal discovery requests, subpoena, depositions, pursuant to a

patient authorization or through attorney-client communications. Likewise, nothing in this order relieves any party from complying with the requirements any state or federal law that protects certain drug and alcohol records (e.g., 42 USC 290dd-3 and 290ee-3, and 42 CFR Part 2).

SO ORDERED THIS 31<sup>st</sup> DAY OF MAY, 2006

Thomas H. Phillips

United States District Court Judge

AGREED TO BY:

/s/John L. Miller

Martin B. Bailey, BPR #15370

John L. Miller, BPR # 22192

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